

**MINUTES
REGULAR BOARD MEETING
THURSDAY, OCTOBER 19, 2006, 9:00 A.M.**

Board Members Present at Roll Call: Les Abrams, Rod Bolden, Gabe Corral, Lee Ann Elliott, Tom Heineman, Cynthia Henry. A quorum was present. Board Members Present After Roll Call: None. Board Members Absent: Myra Jefferson, Sarah Vetault. Board Member Resigned: Gaye Rutan.

Also Present at Roll Call: Debb Pearson, Executive Director; Beckie Loar, Regulatory Compliance Administrator; Dawn Walton-Lee, Assistant Attorney General; Christopher Munns, Assistant Attorney General, Solicitor General=s Office.

Les Abrams acted as Chairperson.

The Board pledged allegiance to the flag of the United States of America.

Lee Ann Elliott moved that the Minutes of the September 21, 2006, Regular Board Meeting be approved. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

PUBLIC ANNOUNCEMENTS AND CALL TO PUBLIC

J. Woodfin Thomas, United States Department of Agriculture filed a Call to Public and spoke to the Board concerning its prior findings concerning complaints he had filed.

COMPLAINT REVIEW

Review and Action Concerning Issues Dealing With Formal Hearing Concerning 06F-5951-BOA, Richard W. Goebel.

Gabe Corral recused himself. Respondent appeared. Dawn Walton-Lee, Assistant Attorney General, represented the State of Arizona. Christopher Munns, Assistant Attorney General, Solicitor General=s office, advised the Board. Cynthia Henry moved that the Board go into Executive Session for legal advice. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion. Upon return from Executive Session, the Board postponed action to allow Lee Ann Elliott to review the record. The Board, having reviewed the record, heard oral argument on behalf of the parties. Rod Bolden moved that the Board accept the Administrative Law Judge=s Findings of Fact 1-28 and Conclusions of Law 1-10, with the correction of typographical errors, to read as follows:

FINDINGS OF FACT

1. The Arizona State Board of Appraisal (ASBA) is the authority for licensing, certifying and regulating real estate appraisers in the State of Arizona.

2. On January 22, 2002, Richard W. Goebel (Applicant) was charged with four counts of theft by the Mohave County Attorney's Office.

3. On June 19, 2002, Applicant pled guilty to one count of Theft, a nondangerous, nonrepetitive, Class 3 felony, in violation of A.R.S. ' ' 13-1802, 13-701 and 13-801, committed on June 8, 2001. Applicant was sentenced to three years probation, commencing by June 19, 2002. As a condition of probation, Applicant was sentenced to be incarcerated for a period of 30 days and assessed probation fees. The remaining three counts were dismissed.

4. On or about January 28, 2004, Applicant filed a Petition to Set Aside Judgment and Order.

5. On February 13, 2004, the Honorable Steven F. Conn ordered that Applicant's conviction be set aside and dismissed the complaint.

6. On December 15, 2004, Applicant submitted an application for a Residential Real Estate Appraiser License to the Board. The Board designated that application as Application No. 5046.

7. At its February 17, 2005 meeting, the Board voted to deny Application No. 5046. The Board denied the application pursuant to A.R.S. ' 32-3611(D) because Applicant's theft committed in 2001 demonstrated a lack of honesty and truthfulness. The Board also denied Application No. 5046 under A.R.S. ' 32-3631(A)(5) because the 2001 theft was an act or omission involving dishonesty, fraud or misrepresentation with the intent to substantially benefit the license or certificate holder or another person or with the intent to substantially injure another person.

8. Applicant timely appealed the Board's denial of Application No. 5046. Applicant's appeal was referred to the Office of Administrative Hearings, an independent agency, for formal hearing.

9. A formal hearing was conducted before Administrative Law Judge Lewis D. Kowal, who later submitted an Administrative Law Judge Decision to the Board for its review and consideration.

10. On June 16, 2005, the Board met to consider Judge Kowal's Administrative Law Judge Decision. Thereafter, the Board issued Findings of Fact, Conclusions of Law and Order Denying Application (2005 Board Order). The 2005 Board Order advised Applicant of his appeal rights. Applicant was also advised that if a motion for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Applicant.

11. The 2005 Board Order was mailed to Applicant by certified mail on September 21, 2005.

12. The 2005 Board Order became effective July 26, 2005 because Applicant did not timely request a rehearing or review.

13. Applicant was not eligible to submit another application for one year from July 26, 2005, the date of the Board's denial of Application No. 5046.

14. On March 9, 2006, Applicant filed an Application for State Certified Residential Real Estate Appraiser with the Board.

15. By letter dated March 24, 2006, the Board's Executive Director, Deborah G. Pearson, acknowledged the Board's receipt of Applicant's application and application fee of \$400.00. Ms. Pearson explained that the application and application fee were being returned to Applicant for the following reason: The Findings of Fact, Conclusions of Law and Order Denying Application was signed

on June 21, 2005, and did not become effective until July 26, 2005. You may not file an application within one year of denial of an application.

16. By letter dated March 16, 2003 (sic) to Ms. Pearson, Applicant acknowledged receiving his returned application and application fee. Applicant contended that the one year preclusion for submitting another application began when the Board initially denied his application at its February 17, 2005 Board meeting. Applicant explained as follows:

I contend that the clock started on February 17, 2005, the date of decision by the Board. No any subsequent date based upon any administrative hearing (sic).

17. Applicant returned his application and application fee with his letter.

18. On July 19, 2006, the Board=s Application Review Committee voted to forward Applicant=s application to the Board with the recommendation to deny the application.

19. On July 20, 2006, a quorum of the Board voted unanimously to accept the Application Review Committee=s recommendation and denied Applicant=s application pursuant to A.R.S. ' 32-3611(D)(2), 32-3611(D), 32-3631(A)(4), 32-3631(A)(5), and 32-3620(A).

20. By letter dated July 24, 2006, Ms. Pearson advised Applicant that the Board had denied his application and informed him of his right to appeal that decision.

21. By letter dated July 25, 2006, Applicant requested an informal settlement conference to discuss the Board=s denial of his application, pursuant to A.R.S. ' 41-1092.06. Applicant had not appealed the Board=s denial at this point in time.

22. By letter dated July 31, 2006, Ms. Pearson advised that he would need to timely appeal the Board=s denial prior to the scheduling of an informal settlement conference.

23. By letter dated August 1, 2006 to Ms. Pearson, Applicant reiterated his request for an informal settlement conference, pursuant to A.R.S. ' 41-1092.06. Applicant did not request to appeal the Board=s denial. He wanted to address the Board=s denial of his application based upon A.R.S. ' 32-3611(D)(2). He contended that A[i]f any portion of the Board=s denial was based upon this statute, then the application should have been rejected solely on that fact, and no other discussion/decision/action should have taken place.@ Applicant wrote that his Aapplication should have been returned, so that it could have been submitted at the appropriate date for the Board=s consideration.@

24. By letters dated August 7 and 8, 2006, Assistant Attorney General Elizabeth A. Campbell responded to Applicant=s August 1, 2006 letter. Ms. Campbell informed Applicant that he was not eligible for an informal settlement conference at that time because he had not appealed the Board=s denial.

25. By letter dated August 8, 2006 to Ms. Pearson, Applicant submitted his appeal of the Board=s denial of his application for certification and demanded an informal settlement conference. He wrote:

IF ANY PORTION OF THE BOARD=S DENIAL WAS BASED UPON [A.R.S. ' 32-3611(D)(2)], THEN THE SUBSEQUENT FINDING(S) BY THE BOARD WERE MADE CONTRARY TO ARIZONA STATUTES. THE BOARD WAS OBLIGATED BY LAW TO RETURN THE APPLICATION WITHOUT ACTION OR COMMENT.

26. Applicant ended his August 8, 2006 letter with the following statement: "Now, can I be any more clear?"

27. By letter dated August 18, 2006, Ms. Campbell informed Applicant that an informal settlement conference had been scheduled for August 24, 2006 at 10:30 a.m. at the Board's offices.

28. Applicant did not express any remorse for his theft or present any evidence of rehabilitation at the hearing.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter in this appeal.

2. Pursuant to A.R.S. § 41-1092.07(G)(1), Applicant has the burden of proof in this appeal. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).

3. The conduct and circumstances described in the above Findings support the conclusion that the Board properly denied Applicant's application due to his failure to comply with A.R.S. § 32-3611(D)(2):

Except as otherwise provided in this chapter, the executive director . . . shall require that the applicant for licensure or certification:

2. Shall not have had a license or certificate denied pursuant to this chapter within one year immediately preceding the application.

The Board's denial of Application No. 5046 was effective on July 26, 2005. The denial of that application was not effective as of the Board's meeting on February 17, 2005, as Applicant contends, because Applicant exercised his right to appeal that denial. By appealing, the Board's denial was stayed pending the administrative hearing process, and any administrative and judicial appeals. Appellant failed to present any statutory, regulatory or case law authority for his contention that the Board was required to make no further findings for denying his current application after denying it pursuant to A.R.S. § 32-3611(D)(2).

4. Appellant failed to present any statutory, regulatory or case law for his contention that the Board was required to return Applicant's current application to him after denying it pursuant to A.R.S. § 32-3611(D)(2). Ms. Pearson, who was under no obligation to do so, warned Applicant that he had applied within one year of his prior denial and returned his application to him with the application fee; it was Applicant who insisted that the untimely application be processed.

5. A.R.S. § 32-3611(D) requires that the Board's Executive Director "verify the honesty, truthfulness, reputation and competency of an applicant." Applicant's commission of theft and subsequent felony conviction, albeit later set aside per statute, demonstrates Applicant's lack of honesty and truthfulness necessary for certification.

6. The conduct and circumstances set forth in the above Findings support the Board's denial of Applicant's application pursuant to A.R.S. § 32-3620(A) (the Board may deny the issuance of a license or certificate as a state licensed or state certified appraiser to an applicant who has been convicted of a felony or any of the grounds prescribed in this chapter).

7. The conduct and circumstances set forth in the above Findings support the Board's denial of Applicant's application pursuant to A.R.S. § 32-3631(A)(4) (a conviction, including a conviction based on a plea of guilty, of a crime which is substantially related to the qualifications,

functions and duties of a person developing appraisals and communicating appraisals to others, or convicted of any felony involving moral turpitude). Applicant=s commission of theft and felony theft conviction demonstrates a lack of honesty and truthfulness necessary to perform the functions of a certified appraiser.

8. The conduct and circumstances set forth in the above Findings support the Board=s denial of Applicant=s application pursuant to A.R.S. ' 32-3631(A)(5) (an act or omission involving dishonesty, fraud or misrepresentation with the intent to substantially benefit the license or certificate holder or another person with the intent to substantially injure another person). Applicant=s commission of theft resulting in a felony conviction demonstrates Applicant=s dishonesty with the intent to substantially injure the victim of the theft.

9. A.R.S. ' 13-904(E) provides that a person may be denied employment by this state or any of its agencies or political subdivisions or a person who has had his civil rights restored may be denied a license, permit or certificate to an occupation by reason of the prior conviction of a felony or misdemeanor if the offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought.@ Applicant=s commission of theft and felony theft conviction demonstrates a lack of honesty and truthfulness necessary to perform the functions of a certified appraiser.

10. Pursuant to A.R.S. ' 41-1092.06(A), Applicant was not entitled to an informal settlement conference until he appealed the Board=s denial of his application. The applicable portion of the statute reads: Alf requested by the appellant of an appealable agency action, the agency shall hold an informal settlement within fifteen days after receiving the request.@ Therefore, the Board was under no obligation to schedule an informal settlement conference until it received Applicant=s August 8, 2006 letter both advising of his appeal and his request for an informal settlement conference.

Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion. Les Abrams moved that the Board accept the Administrative Law Judge's Order, to read as follows:

ORDER OF DENIAL OF APPLICATION

In issuing this order, the Board considers its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law, the Board upholds its earlier denial of Application No. 5951 for certification as a certified residential real estate appraiser submitted by Richard W. Goebel.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Applicant is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. ' 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board=s Executive Director within thirty (30) days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five (5) days after mailing. If a motion for rehearing or review is not filed, the Board=s Order becomes effective thirty-five (35) days after it is mailed to Applicant.

Applicant is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Christopher Munns left the meeting.

Review and Action Concerning 2231, Carolina Nuno.

Respondent appeared. Staff summary was read. Gabe Corral moved that the matter be referred to investigation. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2230, Albert A. Klawer.

Respondent appeared. Staff summary was read. Gabe Corral moved that staff subpoena additional information if respondent does not file the requested information at the Board office by 5:00 p.m. on October 19, 2006. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2159/2161/2163/2165/2167/2169/2171, Thomas A. Reeb.

Respondent appeared. Gabe Corral moved that the Board accept the investigator's report. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that respondent be invited to an informal hearing. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2213, Paul S. Wooller.

Respondent appeared. Gabe Corral moved that the Board accept the investigator's report. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that respondent be invited to an informal hearing. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2229, Wade A. LaVigne.

Respondent appeared. Staff summary was read. Tom Heineman moved that the Board find no violations and dismiss the complaint. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2190/2195, John M. Granger.

Respondent appeared. Gabe Corral moved that the Board accept the investigator's report. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that respondent be invited to an informal hearing. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2174, Kandace L. Levi.

Respondent appeared. Gabe Corral moved that the Board accept the investigator's report. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that the Board invite respondent to an informal hearing. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2157, Michael W. Huscroft/2158, Tamara L. Hoffman.

Respondents did not appear. Gabe Corral moved that the Board accept the investigator's report. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion. Tom Heineman moved that the Board find Level I violations and offer each respondent a nondisciplinary letter of concern. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2177, Lucille DeMarco.

Respondent did not appear. Gabe Corral moved that the Board accept the investigator's report. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that the Board invite respondent to an informal hearing. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2192, James P. Hondel.

Respondent did not appear. Gabe Corral moved that the matter be referred to investigation. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2209/2211, Travis Thorne.

Respondent did not appear. Les Abrams moved that the Board reconsider its prior findings. Gabe Corral seconded the motion. Les Abrams moved that the Board find no violations and dismiss the complaints. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 1828/1829, Ray E. Trigueros.

Respondent did not appear. Tom Heineman moved that the Board terminate respondent's mentorship and probation effective October 24, 2006. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2064, Stanley D. Grimes.

Respondent did not appear. Gabe Corral moved that the Board issue respondent a cease and desist letter. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning Superior/Appellate Court Case 1CA-CV 05-0868 (98F-0544-BOA), Lawrence E. Bloom.

Respondent did not appear. Dawn Walton-Lee updated the Board with the status of respondent=s appeal.

Review and Action Concerning 2214, Lawrence E. Bloom.

Respondent did not appear. Lee Ann Elliott moved that the matter be referred to formal hearing before the Office of Administrative Hearings (OAH). Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning Superior/Appellate Court Case CV-06-4141 (03F-1498-BOA/04F-1782-BOA/04F-1784-BOA), Felicia M. Coplan.

Respondent did not appear. Dawn Walton-Lee updated the Board with the status of respondent=s appeal.

Review and Action Concerning 2215, John K. Senerchia.

Respondent did not appear. Gabe Corral moved that the Board offer respondent an amended consent agreement providing for education. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that the Board accept the mentor's reports that were filed late. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2219, Kendal J. Britton.

Respondent did not appear. Staff summary was read. Tom Heineman moved that the Board find no violations and dismiss the complaint. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2221, Charlene F. Castillo.

Respondent did not appear. Staff summary was read. Lee Ann Elliott moved that the Board find no violations and dismiss the complaint. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2222, Jefferey S. Williams.

Respondent did not appear. Staff summary was read. Lee Ann Elliott moved that the Board find no violations and dismiss the complaint. Gabe Corral seconded the motion. The motion was withdrawn. Lee Ann Elliott moved that the Board issue respondent a cease and desist letter. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2223, Jonathan S. Prosch.

Respondent did not appear. Staff summary was read. Gabe Corral moved that staff subpoena additional information. Lee Ann Elliott seconded the motion. The Board voted 5-1 in favor of the motion. Les Abrams voted no.

Review and Action Concerning 2224, Harrison Gordon/2225, Joshua Hernandez/2226, Nicolo Amoroso.

Respondent did not appear. Staff summary was read. Tom Heineman moved that the matters be referred to investigation. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2227, Felicia M. Coplan.

Respondent did not appear. Staff summary was read. Tom Heineman moved that the Board invite respondent to an informal hearing. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2228, Cynthia A. Reese.

Respondent did not appear. Staff summary was read. Gabe Corral moved that the Board find no violations and dismiss the complaint. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2232, Margie A. Redman.

Respondent did not appear. Staff summary was read. Lee Ann Elliott moved that the Board issue a cease and desist letter and request the return of the revised certificate. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2040, Randolph W. Buckingham.

Respondent did not appear. Staff was instructed to proceed as previously instructed.

Review and Action Concerning 2057, Todd Michael Breyfogle.

Respondent did not appear. Gabe Corral moved that the Board rescind its referral to the Office of Administrative Hearings (OAH) for formal hearing. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion. Gabe Corral moved that the Board accept the nondisciplinary letter of remedial action which was filed late. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

BOARD CHAIRPERSON REPORT

None.

EXECUTIVE DIRECTOR REPORT

Debb Pearson reported on the status of the Assistant Attorney General=s assignments; advised no complaint answer dates had been extended by staff; reported the following complaint status for calendar year 2006 through 9/30/06:

Complaints filed	139
Complaints dismissed	36
Complaints referred to investigation	25
Complaints resolved with nondisciplinary letter of concern	22
Complaints resolved with nondisciplinary letter of remedial action	5
Complaints resolved with disciplinary letter of due diligence	2
Complaints resolved with probation	6
Complaints referred to informal hearing	10
Complaints referred to formal hearing	3
Complaints resolved with suspension	4
Complaints resolved with surrender	1
Complaints resolved with revocation	0
Complaints resolved with cease and desist letters	19

Violation Levels:

I	25
II	4
III	1
IV	0
V	8

and reported on the Appraisal Foundation's Valuation Symposium 10/12/06; the State Regulatory Advisory Group meeting 10/13/06; the Association of Appraisal Regulatory Officials (AARO) Investigations and the Regulatory Process Seminar 10/13/06; and the AARO 2006 Fall Conference 10/14/06 through 10/17/06.

APPLICATION REVIEW COMMITTEE REPORT

Les Abrams reported the following Arizona appraiser and property tax agent information as of October 17, 2006:

Licensed Residential	1039	
Certified Residential	927	
Certified General	761	
Nonresident Temporary	61	Total 2788
Property Tax Agents	307	

Rod Bolden moved that the Board deny the certified residential biennial renewal application #20963, Samuel N. Napolitan, based on A.R.S. §§ 32-3611(D), 32-3631(A)(4), and 32-3620(A). Lee Ann Elliott seconded the motion. The Board voted

unanimously in favor of the motion. Tom Heineman moved that the Board deny licensed residential application #6189, David S. Roth, based on A.R.S. §§ 32-3611(D) and 32-3631(A)(4). Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion. Lee Ann Elliott moved that the Board accept the Committee=s recommendations (see attached). Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

APPRAISAL TESTING AND EDUCATION COMMITTEE REPORT

Lee Ann Elliott moved that the Board accept the Committee=s recommendations (see attached). Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

OLD BUSINESS

Discussion and Action Concerning Zillow.com Online "Zestimates".

Tom Heineman moved that the Board issue Zillow.com a second cease and desist letter and refer the matter to the Attorney General, Criminal Division.

NEW BUSINESS

None.

CONFIRMATION OF MEETING DATES, TIMES, LOCATIONS AND PURPOSES

The upcoming Committee and Board meetings were scheduled as follows:

November

15	Application Review Committee	3:00 p.m.
16	Appraisal Testing and Education Committee	8:30 a.m.
16	Board	9:00 a.m.

December

13	Application Review Committee	3:00 p.m.
14	Appraisal Testing and Education Committee	8:30 a.m.
14	Board	9:00 a.m.

ADJOURNMENT

The meeting was adjourned.

Lester G. Abrams, Chairperson